



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/171234

PRELIMINARY RECITALS

Pursuant to a petition filed January 07, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 09, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly reduced petitioner's FS allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner had previously received FS for herself and 5 children, TB, EGB, XS, ZS (d.o.b. 2011), and ZS (d.o.b. 2012). Petitioner's gross monthly household income was \$1,455.00.

3. On October 23, 2015, petitioner informed the respondent that XS, ZS (d.o.b. 2011), and ZS (d.o.b. 2012) were no longer residing in her home. As a result, the respondent reduced petitioner's FS allotment from \$797 to \$351, based upon the decrease in household size.
4. On November 19, 2011, petitioner reported to respondent that TH (d.o.b. 2005), TH (d.o.b. 2007), and WH were residing with petitioner. No action was taken by the respondent at that time.
5. On December 8, 2015, petitioner contacted the respondent, and ten days later the respondent issued a Notice of Proof Needed, with a verification deadline of December 18, 2015. On January 8, 2016, the respondent received the requested verification. The case was processed, and petitioner's FS was lowered from \$351 to \$315, due to an increase in unearned income. The \$315 allotment was based on a household size of 5, as petitioner reported that WH was no longer in her home.

DISCUSSION

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a).

The FS Handbook, Appendix 3.3.1, defines a "food unit" as "One or more persons who live in the same household and purchase and prepare food together for home consumption." Further, it defines "purchase and prepare" as follows:

People living together who:

1. Share in the cost of purchasing food.
2. Share in the preparation of food.
3. Eat together.

Each person does not have to shop, provide money, prepare food, and eat together. Any of those activities is sufficient to include a member in purchasing and preparing food with the group.

The petitioner provides foster care, and as such, her household size varies quite a bit. She stated at hearing that she always notified her worker when children left or were added to her household, and the respondent's testimony corroborated that. Petitioner testified that the Notice of Proof was the first time that she was requested to verify her foster children in her care.

The respondent provided an appeal summary stating:

On 11/19/15 the agency received verification that T.H. (DOB: 12/31/05), T.H. (01/22/07) and W.H. (04/02/01) were residing with Petitioner. No actions were taken, it wasn't until the 12/08/15 that Petitioner contact the agency and reported the 3 children in the home. ...

Unfortunately, the record does not disclose why no action was taken after the respondent received verification in November that petitioner's household size had increased. I am also confused as to why the respondent requested verification regarding TH (d.o.b. 2005), TH (d.o.b. 2007), and WH in December, when, by its own admission, verification was received in November.

I must conclude that the agency erroneously failed to adjust petitioner's FS allotment in December, 2015. The record reflects that petitioner may have had an increase in her unearned income since then, and further indicates that WH is no longer in petitioner's home. The respondent will need to ascertain petitioner's income and household composition for each month commencing with December, 2015. I will remand this matter to the respondent to re-determine petitioner's FS allotments for December, 2015, through the present date.

CONCLUSIONS OF LAW

The respondent has failed to demonstrate that it correctly allotted petitioner's FS commencing in December, 2015.

THEREFORE, it is

ORDERED

That the matter be remanded to the respondent with instructions to ascertain petitioner's income and household composition for each month commencing with December, 2015, and to issue appropriate supplemental FS based upon the petitioner's income and household composition. The agency shall do so within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

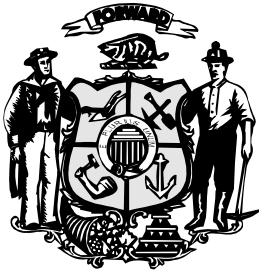
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of February, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 25, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability